

DAVID MENDENHALL

IBLA 80-405

Decided May 19, 1980

Appeal from decision of the Idaho State Office, Bureau of Land Management, declining to record mining claim recordation certificates. I MC 47559.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally --
Federal Land Policy and Management Act of 1976: Recordation of
Mining Claims and Abandonment -- Mining Claims: Recordation

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with BLM within 90 days after the date of location. 43 CFR 3833.1-2(d) states that a location notice shall be accompanied by a service fee. As this is a mandatory requirement there is no recordation unless the notice is accompanied by the stated fee, or until it is paid. Where, for a claim located after Oct. 21, 1976, the filing fee is not paid within 90 days after the date of location, the claim must be deemed abandoned and void.

APPEARANCES: David Mendenhall, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is taken from a decision dated November 30, 1979, rendered by the Idaho State Office, Bureau of Land Management (BLM), declining to record appellant's certificates of location for the Deadline and Nugget Creek mining claims because they were not accompanied by the service fee as required by 43 CFR 3833.1-2(d). That regulation states: "Each claim or site filed shall be accompanied by a one time \$5 service fee which is not returnable. A notice or certificate of location shall not be accepted if it is not accompanied by the service fee and shall be returned to the owner."

The Deadline and Nugget Creek mining claims were located on July 29, 1979, and October 22, 1979, respectively. His location certificates are BLM date stamped "October 24, 1979." Appellant apparently submitted the required service fees together with his notice of appeal which were received on February 19, 1980. Appellant states essentially that the failure to pay the fees timely was the result of an oversight.

[1] Both sentences of 43 CFR 3833.1-2(d), supra, refer to the requirement that the service fee must accompany the claim or site filed and the second sentence mandates rejection and return to its owner of a filing not accompanied by the fee. In a recent decision, Joe B. Cashman, 43 IBLA 239 (1979), we construed that regulation in a manner which controls the disposition of this case. We stated at 43 IBLA 240:

43 CFR 3833.1-2 requires that, for mining claims, millsites, or tunnel sites located prior to October 21, 1976, a copy of the location notice must be recorded with the proper office of BLM within 3 years, or before October 22, 1979. For such claims or sites located after October 21, 1976, the location notice must be recorded in the proper BLM office within 90 days following date of location. 43 CFR 3833.1-2(d) states that each claim or site filed with BLM shall be accompanied by a \$5 service fee. This is a mandatory requirement. Without payment of the filing fee, there is no recordation.

Appellant's filing fees were due within 90 days after the location of his claims. Since the fees were not paid within 90 days after the location of the claims, appellant's filings were not timely and his claims must be deemed abandoned and void under the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). We recognize that appellant may have sent money to the local recorder's office and erroneously assumed that the money covered all the recording costs for the county and for BLM. However, the fact remains that service fees were not timely paid to BLM.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

